

# TAMING THE OUTLAW SEA

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**T**he goods of the world move predominantly by sea. Across that broad global commons, trade generally flows freely and well. Yet there are places today where the term “outlaw sea” applies.<sup>1</sup> Piracy, sadly, flourishes in several key choke point regions of the world’s sea-lanes of communications. We must tame this outlaw sea.

To many, the word “piracy” conjures images of seventeenth- and eighteenth-century swashbuckling rebels brandishing cutlasses and flintlocks under the ominous skull-and-crossbones flag, à la Walt Disney World’s “Pirates of the Caribbean” attraction. But to those who have been victims of their blades and bullets, the word invokes a darker “profession”—and one that continues today.

Pirates and corsairs of the “Golden Age of Piracy”—feared mariners with names like Barbarossa, “Calico Jack” Rackham, “Black Bart” Roberts, and Anne Bonny—have captured imaginations since early-eighteenth-century periodicals chronicled their crimes. But piracy is more than theft, rape, and murder on the high seas. It is a systemic destabilizer of international norms of commerce, economics, and trade. Piracy is also intertwined with conditions ashore. In particular, piracy in the waters off the Horn of Africa today results from deep social, political, economic, and environmental problems in Somalia. It is the fruit of anarchy, extreme poverty, and the severe failure of the rule of law. At the pragmatic level, however, piracy is an illicit entrepreneurial pursuit whose main objective is to maximize profit.

In other words, Somali pirates are armed opportunists who stem from a permissive and enabling environment formed by a weak state and who engage in a

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business enterprise subject to risk-and-reward calculations that can be influenced by the international community. The international community, including various governmental and nongovernmental organizations, as well as private enterprises, has an opportunity now to work together and exert the necessary influence both at sea and ashore to shift the calculus of piracy from profitable enterprise to futile folly.

The United Nations, the European Union (EU), the African Union, the Arab League, and NATO are collaborating to influence the risk-and-reward analysis of Somali pirates. A wide range of countries—including Australia, China, Djibouti, Egypt, Ethiopia, Japan, Kenya, Malaysia, New Zealand, Pakistan, Russia, Singapore, Somalia, South Korea, and Ukraine—are cooperating to broadly address the issue as well.

Though piracy manifests itself most perceptibly at sea, it is a complex and persistent land-based problem with political, social, and economic dimensions requiring a long-term, comprehensive solution. To bring about a lasting cure to the cancer of piracy, particularly off the Horn of Africa, two endeavors must be undertaken in parallel. First, the risk of failure in hijacking a vessel at sea must be increased to the point where piracy is no longer seen as an attractive and lucrative endeavor. In other words, pirates' own calculations must yield deterrent conclusions. Second, governance, stability, and security within Somalia must be so improved that less risky yet reasonably profitable alternatives to piracy can be fostered both at sea and ashore. The second task is a much more challenging proposition than the first, given Somalia's fragmented and unstable state.

## CAPTURING THE LESSONS OF THE PAST

Lawlessness upon the sea is nothing new. Piracy is an ancient profession. Its history dates back to antiquity, preceding even the ancient Egyptians. Nautical bandits have plied the waves for nearly as long as people have used the seas for trade. The Lukka raiders, for example, launched raids from the coast of Asia Minor as early as the fourteenth century BC; Thucydides mentions pirates in his *History of the Peloponnesian War*; and Herodotus writes of how pirates kidnapped the poet Arion of Methymna in an attempt to steal his riches.<sup>2</sup>

As is the case today in the Horn of Africa, piracy in the ancient Mediterranean world flourished when there was an absence of central control.<sup>3</sup> In periods when the empire du jour—Egyptian, Greek, or Roman—was unable to maintain a strong naval presence in the large inland sea, pirate communities spread along its shores. Before the middle of the first century BC, piracy was a significant problem in the Mediterranean.<sup>4</sup> As Rome's maritime trade of wheat and other commodities flourished, piracy expanded. At their height pirates exerted dominion and control over the Mediterranean to an extent that left little room for

free navigation or commerce.<sup>5</sup> The economic impact was felt throughout the Roman Republic as prices of goods—particularly of wheat, vital for feeding the Roman people—grew out of control. Even young Julius Caesar was taken for ransom by Cilician pirates, around 75 BC.<sup>6</sup>

It was only when Rome's power expanded to claim the whole of the Mediterranean basin—and the littorals whence pirates sailed—that piracy was eradicated from the ancient world.<sup>7</sup> Gnaeus Pompeius Magnus, known to history as Pompey, was sent by the Roman people to wrest the seas from the pirates. In combating piracy, Pompey focused on the act and its source, not exclusively on the actor. Over a period of several months in 67 BC, with hundreds of ships and 120,000 soldiers, he swept the Mediterranean Sea and corralled the pirates in their strongholds ashore.

Most surrendered.<sup>8</sup> They did so because the risk of death or capture at sea in future piratical attempts exceeded the potential rewards to be gained. But they surrendered also because Pompey, understanding that piracy was bred in rootlessness and social disorder, offered attractive alternatives ashore. He admitted some into the small towns of the Cilicians in Anatolia, and others he planted in the city of the Solians, also in Anatolia; to the majority he granted land in the ancient Greek province of Achaëa to call their own and cultivate.<sup>9</sup> With this land he afforded the former pirates an opportunity to pursue an enterprise with more acceptable risks and rewards and so helped turn the pirates into contributing Roman subjects.

Pompey, then, wiped out Mediterranean piracy by countering pirates at sea *and* by presenting former and would-be pirates with stakes in profitable and less risky enterprises ashore. Though Somali pirates are unlikely to be presented with land to call their own, Pompey's actions provide a valuable demonstration of the balanced application of hard and soft power both at sea and ashore, one that is no less relevant and wise in combating piracy today than it was more than two millennia ago.

## CONTROL OF THE SEA IS VITAL

Though Pompey's strategic vision and his expedition against piracy were successful, not even the mighty Roman Empire ever extinguished piracy permanently. As civilizations and empires ebbed and flowed and control of what Alfred Thayer Mahan later called a "wide common" was exerted and relinquished, so too did the threat and impact of piracy fluctuate.<sup>10</sup> In the early Middle Ages, the Vikings raided and plundered their way across Europe, and later corsairs from the North African "Barbary Coast" terrorized the Mediterranean Sea. Piracy also waxed and waned in the Far East and in the Caribbean, as trade grew and the tides of profit rose and fell. As merchants ventured to sea and maritime trade

expanded, pirates followed, ransacking vulnerable ships and cargo; they continue to do so to this day.

Today, however, pirates chase their prey not in galleys, sloops, or schooners but in fast, open skiffs. They brandish not cutlasses and flintlocks but AK-47s and rocket-propelled grenades and are aided by satellite phones, high-tech navigation gear, and competent and continually evolving networks ashore. The last few years have witnessed a rising trend in piratical attacks around the world. In 2009, the International Maritime Bureau (IMB) reported 406 attacks, compared to 293 in 2008, 263 in 2007, and 239 in 2006. In 2009, a total of 217 incidents carried out by suspected Somali pirates were reported to the IMB, making the area off the Horn of Africa the number-one hot spot for piracy in the world.<sup>11</sup> The attacks are becoming more violent, brazen, and sophisticated. The number of incidents where guns were used nearly doubled in 2009 from 2008 levels and has tripled since 2005.<sup>12</sup> Somali pirates have extended their reach, threatening not only the Gulf of Aden and the east coast of Somalia but also the southern region of the Red Sea, the strait of Bab el Mandeb, and the east coast of Oman.<sup>13</sup>

The attacks listed in the IMB report were wide-ranging; they included eighty attacks off the east and south coasts of Somalia, 116 in the Gulf of Aden, fifteen in the southern Red Sea, four off Oman, and one each in the Arabian Sea and Indian Ocean. In 2009, off the east coast of Africa alone, a total of 114 vessels were fired upon, forty-seven vessels were hijacked, 867 crew members taken hostage, four killed, and one missing.<sup>14</sup> By comparison, throughout the rest of the world six vessels were fired upon, two were hijacked, 185 crew members were taken hostage, four were killed, and seven were missing.<sup>15</sup> Since IMB figures are based on self-reporting and many attacks may go unreported, the actual figures may very well be much higher, particularly in areas where the level of international focus on piracy is lower than it currently is off the Horn of Africa.

The year 2010 started with a bang for the twenty-four seamen of the chemical tanker *Premoni*. The ship was attacked and hijacked, and its crew taken hostage by Somali pirates in the Gulf of Aden on 1 January. As of the second week of January a total of six vessels had been successfully attacked by pirates and bandits: *Premoni*; a liquified propane gas tanker in Côte d'Ivoire's Abidjan harbor; a vehicle carrier off the Horn of Africa; and a vehicle carrier, a chemical tanker, and a bulk carrier in Southeast Asia. As of mid-April, a total of forty-eight vessels had been attacked, or attacks had been attempted against them, off Africa's eastern shores. Globally, that number grows to a total of eighty-one vessels.

The annual cost of piracy is not accurately recorded, but it is not trivial, even setting human costs aside. Piracy is estimated to cost anywhere between a billion and sixteen billion dollars a year.<sup>16</sup> Some countries are investing to thwart piracy by increasing their military presences in high-risk areas. Some shipping

companies are taking such measures as rerouting ships to bypass the Gulf of Aden, hiring private security guards, and installing nonlethal deterrence equipment. Examples of the latter are the Long Range Acoustic Device, which was employed against pirates attempting to hijack the luxury cruise ship *Seabourne Spirit* in late 2005, and Secure-Ship, an innovative electrified fence that surrounds the whole ship and uses a high-voltage pulse to deter boarding attempts.<sup>17</sup> But these actions all come at a price. For example, routing a tanker from Saudi Arabia to the United States via the Cape of Good Hope adds approximately 2,700 miles to the voyage and approximately \$3.5 million in annual fuel costs.<sup>18</sup> According to the U.S. Maritime Administration, the cost of avoiding risk becomes more complex in the liner trades. If pirates were to become able to attack cruise liners successfully and regularly, the long bypass required to avoid them would result in the need for additional vessels to maintain scheduled service and capacity commitments. For example, routing from Europe to the Far East via the Cape of Good Hope rather than through the Suez Canal would incur an estimated additional \$89 million annually—\$74.4 million in fuel and \$14.6 million in charter expenses—without considering the added costs associated with disruption of global supply chains.<sup>19</sup> Also, insurance costs have soared over the last few years. The cost of war-risk insurance premiums for vessels passing through the Gulf of Aden, about five hundred dollars in 2007, was twenty thousand dollars in 2008.<sup>20</sup> A shipowner with a vessel worth \$100 million can now reportedly expect to pay about \$150,000 to cover its payload—a cost that is ultimately passed on to the consumer.<sup>21</sup>

Not all is bad news, however. The rate of successful hijackings in the vicinity of the Horn of Africa dropped in the second half of 2009, to an average of one in nine vessels targeted by pirates, compared to one in 6.4 in 2008.<sup>22</sup> The decrease can be attributed to expanded control of the sea around the Horn of Africa established through increased international cooperation and naval patrols; expanded coordination of naval patrols through the use of the Mercury secure, Internet-based communication system; shared intelligence at the operational level; and willingness of potential target ships to respond to military guidance, comply with recommendations, and deploy effective protective measures. If continued, these measures, particularly self-protection by potential targets, will likely drive the rate of successful hijackings down further.

## THE CHALLENGE ASHORE

In Somalia, where nearly ten million mostly nomadic pastoralist people live with neither a permanent national government nor a formal economy and where pervasive and violent crime is an extension of the general state of insecurity, piracy is perceived pragmatically, as an opportunity for profit.

In a recent National Public Radio report, for example, a Somali pirate nicknamed “Boya” declared, “I’ll be a pirate until I die. . . . We understand what we’re doing is wrong. But hunger is more important than any other thing.” Another pirate acknowledged that “sometimes doing a bad thing is the only way to improve the situation for yourself and the people you love.” That same pirate also described how he had “worked his way up” from indigent lobster fisherman to pirate and then, having made enough money to get his siblings out of southern Somalia and into neighboring Kenya, had quit. He would, he asserted, never go back to being a pirate.<sup>23</sup>

Though just two examples, the above vignettes offer a glimpse of the factors influencing individuals to shoulder Kalashnikovs, board open skiffs, and head to sea in search of easy prey. It also brings into focus a fundamental fact of piracy: that at its core, piracy is a land-based challenge.

Even so, piracy is most often looked at as a waterborne problem. In fact, article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) defines piracy as, in part, “any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; against (ii) a ship, aircraft, persons or property in a place outside the jurisdiction of any state.”<sup>24</sup> This definition, though adequate for the framing of law-enforcement and antipiracy activities on the high seas, does not account for the dual challenge that characterizes piracy. UNCLOS article 101 is focused on the symptom, the crime at sea, and not the cause, the deplorable conditions ashore. To address the challenge of Somali piracy, the UN Security Council has approved resolutions 1816, 1838, 1846, and 1851—all containing authority to use “all necessary means” to counter piracy. Broadly speaking these resolutions encourage states to develop a cooperative framework to oppose piracy in the region and grant specific authority to “cooperating states” to enter Somalia’s territorial sea to repress piracy in a manner consistent with international law. Resolution 1851 authorizes “cooperating states” to go farther and engage in antipiracy action on Somali soil—a complex endeavor even under the best of circumstances and one that ought to focus on building the capacity of Somalia’s Transitional Federal Government to fulfill its responsibility to the Somali people and root out piracy and armed robbery at sea.<sup>25</sup> That said, none of those resolutions authorize any state to address the deplorable conditions ashore that are arguably why individuals find piracy potentially attractive. Perhaps it is time for the international community to focus on the root causes.

Piracy off the Horn of Africa has its sources in economic deprivation and political instability. It is a multifaceted problem that calls for a comprehensive

solution involving actions and activities ashore as much as focused naval power at sea. In the words of Secretary of Defense Robert M. Gates, “There is no purely military solution to it, and as long as you’ve got this incredible number of poor people and the risks are relatively small, there’s really no way to control it unless you get something on land that begins to change the equation for these kids.”<sup>26</sup> If the international community believes piracy off the Horn of Africa is a serious matter that must be resolved, it must seriously consider broad solutions that go beyond the obvious and expedient application of naval power at sea. In counter-ing piracy, as in most security efforts, the solution will be found in a balanced and comprehensive approach. If piracy in those strategic waterways is ever to be eradicated, it will take the coming together of governments, nongovernmental organizations, international organizations, and the private sector in the partnerships necessary to deliver security, stability, sustained economic development, and prosperity in Somalia. Hard military and law-enforcement activities are necessary but not enough. Pompey understood the need for this balance in the Mediterranean more than two thousand years ago; it is a fact that must not be overlooked in the Horn of Africa today.

#### AN OPPORTUNITY FOR COOPERATION

Recognizing that no one nation has all the resources required to guarantee safety and security throughout the maritime domain, the international community must commit enough maritime assets—platforms, capabilities, and ideas—to make acts of piracy both risky and difficult to conceal, thereby treating the symptom of piracy at sea. International operations such as NATO’s Operation OCEAN SHIELD, the EU’s Operation ATALANTA, and Combined Task Force 151—all supporting international efforts to combat piracy off the Horn of Africa—are excellent examples of such a collaborative effort among international partners. Certainly more ships would be helpful and welcomed, but even more valuable would be increased inputs from overhead satellites and greater deployment of maritime patrol aircraft and long-range surveillance assets.

There are many ways to collaborate and cooperate in conducting maritime security operations. There are expansive capabilities outside the military. For instance, Stephen M. Carmel, senior vice president of maritime services at Maersk Line, Limited, recently wrote about employing commercial shipping in preserving maritime security.<sup>27</sup> Carmel describes how Maersk Line—the world’s largest container shipping company, with over a thousand ships of various types—can offer what he called “overwhelming, persistent global presence” and a “good vantage point from which to see what is going on in the global commons.”

Commercial shipping vessels—the very targets of pirates—can be found throughout the area of interest. Maersk has operations in nearly three hundred



ports around the world and makes thirty-three thousand port calls a year—one every fifteen minutes, every day of the year.<sup>28</sup> No single navy can make such a claim, and no single nation can see what Maersk's ships see every day—and that's just one company. The implications of these statistics are enormous. If each one of the thousands of commercial vessels at sea were to contribute to a partnership for maritime surveillance and reporting, domain awareness would potentially improve by orders of magnitude, as would the ships' own security.<sup>29</sup>

Each potential partner can bring something that can elevate the comparative advantage at sea of antipiracy forces. The UN, the EU, and NATO must seek, create, and leverage opportunities for maritime collaboration. But the maritime piece is just part of the puzzle. Maritime surveillance capabilities and capacity for maritime law enforcement and military engagement at sea must be integrated with the efforts of nonmilitary government agencies, nongovernmental organizations, and public and private ventures ashore. Ultimately, piracy must be resolved on land, by enabling Somalia's Transitional Federal Government to deliver security and create jobs and thereby reduce the risk of engaging in legitimate enterprises ashore.

Of course, and as we have noted, this is much easier said than done. In Somalia the internal challenges are daunting. Somalia's internationally recognized Transitional Federal Government has been unable to establish itself as the legitimate regime, and most of the country is outside its control.<sup>30</sup> Somalia's weak government serves as a catalyst for piracy and exacerbates the challenges of countering pirates at sea.

The lack of capacity and domestic legislation in Somalia and an absence of clarity as to how to dispose of pirates after they are captured have hindered international action against the pirates off the coast of Somalia and in some cases led to pirates' being released without facing justice.<sup>31</sup>

To counter piracy at sea effectively, there must be a viable and legitimate central authority ashore capable of enforcing the rule of law. As the commander of U.S. naval forces in Europe and Africa and of NATO's Allied Joint Task Force Command in Naples, Admiral Mark P. Fitzgerald, recently commented, "Somali-based piracy . . . will not go away until a government in Mogadishu is stable enough to confront the problem within its borders."<sup>32</sup> The nations of Djibouti, Ethiopia, Maldives, Madagascar, Seychelles, Yemen, Tanzania, Kenya, and Somalia have all pledged their support to seizing, investigating, and prosecuting pirates off Somalia's coast, but the solution to piracy in the Horn of Africa ultimately lies within Somalia itself.<sup>33</sup> It is of little help in long-term piracy eradication if naval forces must operate in a catch-and-release mode because it is difficult or impossible to prosecute pirates.

## STRONGER TOGETHER

In this interconnected world, international security and prosperity depend heavily upon the sea. Skillful cooperation and collaboration at sea and ashore are vital components to ensuring the free and lawful use of the world's waterways. Piracy in the Horn of Africa presents the international community with a complex and multidimensional challenge but also with a golden opportunity to come together and work collaboratively to solve it.

Beyond naval assets, the international community has an opportunity to take a comprehensive approach to countering piracy, one that focuses on a broad range of issues including deterring and disrupting piratical activity at sea; capturing pirates and bringing them to justice; developing regional and international agreements to prosecute suspected pirates effectively and humanely and legally punish them when found guilty; enabling Somalia's Transitional Federal Government to extend and enforce the rule of law; and encouraging the economic development of Somalia over the long term. Countering piracy off the Horn of Africa is an effort that must reflect international will, must focus on building the capacity of Somalia's Transitional Federal Government and the governments of neighboring countries, and be coordinated centrally and skillfully (by an internationally sanctioned body) so as to achieve a holistic effect. The European Union, given its recent successes with Operation ATALANTA and its growing commitment to combating piracy off the Horn of Africa, seems a logical international body to lead this effort.

Broadly speaking, the international community must undertake projects to build the capacity of Somalia's Transitional Federal Government to extend the reach of the rule of law. Additionally, investment in developing the capacities of the other countries in the region to detain, prosecute, and punish pirates is key.

NATO in particular can play a role in this regard in developing partner capacity to combat piracy, and it is expected to do so within the framework of the Contact Group on Piracy Off the Coast of Somalia, in a low-cost and noncontentious way. Simultaneously, international humanitarian work ashore must be encouraged and protected—an increasingly complex endeavor. The combination of conflict, drought, floods, and disease that has ravaged the country for decades has created a humanitarian catastrophe for some 3.64 million Somalis—more than half the population—who are in need of livelihood or humanitarian support. This environment of extreme penury and human displacement, where one in five children under five years old is acutely malnourished, adds to internal instability and serves as a catalyst for illicit activities, such as piracy, that in turn can further destabilize the region. The creation of alternative livelihoods through public/private partnering ashore, as well as

afloat, is vital. From the enablement of subsistence farming through irrigation to the development of environmentally sustainable coastal fish farms, to environmental remediation to support both agriculture and aquaculture, to the generation of microloans to facilitate the creation of small business—the range of possibilities is enormous and limited only by the imagination and will of the international community.

Beyond the low-water mark, control of the sea and maintenance of maritime domain awareness are essential to the eradication of piracy and armed robbery at sea. Programs now ongoing and initiatives currently being staffed within NATO's Allied Command Operations are squarely aimed at exploiting potential synergies in parallel with, and in support of, the EU and coalition maritime forces, as well as several national initiatives. Efforts include the close cooperation and exchange of information related to antipiracy efforts between various players within NATO and between NATO, the EU, the UN, the African Union, and the Arab League. Continued cooperation is paramount and must be expanded. We must achieve fusion in existing command-and-control structures, to include the use of space-based surveillance assets, NATO AWACS (airborne surveillance and control) aircraft, and unmanned aerial vehicles. Other ideas include the "tagging" of vessels identified as legitimate commercial and private craft, employment of convoys and escorts, a tactical shift to blockading pirates' points of embarkation, and, in cooperation with commercial entities, the use of more effective nonlethal, nonmilitary piracy countermeasures aboard merchant and passenger vessels. All of these options would serve, in combination, as complementary efforts to make acts of piracy more risky and therefore less likely to succeed.

Understanding that piracy is neither an at-sea problem alone nor a challenge with a single and isolated solution will go a long way toward taming the "outlaw sea." In addressing the root cause of piracy, the European Union, empowered by international consent and in partnership with the broader international community, must wisely consider, as the Greek historian Plutarch suggests, that "man by nature is not a wild or unsocial creature, but is transformed by the unnatural vice; whereas he may be softened by new customs and a change of place and life." Upon that consideration it should do as Pompey did and give pirates a taste of an "honest life by dwelling in towns and tilling the ground" or by casting their nets and harvesting the fruits of the sea.<sup>34</sup> The solutions to piracy will not likely be delivered by warships at sea alone; rather, they will emerge from a careful balance of security and development both afloat and ashore.

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